

de. SOM

ORIGINAL

Ernest M. Esparza
90291-022; SS3 Unit
Federal Correctional Institution
1900 Simler Avenue
Big Spring, Texas 79720

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 18 2007

at 12 o'clock and 15 min. PM
SUE BEITIA, CLERK

Defendant--Petitioner, Pro se.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

-versus-

ERNEST M. ESPARZA,

Defendant-Petitioner.

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CR 03-00127 SOM
CV 07-00375 SOM-42R
CASE: CM/ECF V3.04 (3/07)

MOTION WHY GOVERNMENT HAS FORWARDED NO COPY
OF ANSWER TO 28 USC § 2255

COMES the Petitioner, Ernest M. Esparza, Pro se, and moves the Court under Rule 7 of the Federal Rules of Civil Procedure for why the Government has not made any answer to Petitioner's motion 28 USC § 2255. In support Petitioner states:

1. Petitioner filed a 28 USC § 2255 on July 9, 2007, and was actually filed in the court on July 13, 2007.
2. The Court scheduled a hearing date, ordered Government to make a response, and allowed time for Petitioner to make a answer. E.g. Document 183.
3. Time for Government has come and passed, and Petitioner has not received any copy of any answer, nor otherwise; no motion

for any extension has been filed by Government, nor any other motions.

4. To date Petitioner has not been afforded any copy in order to make any timely response to Government, and on or about September 12, 2007, Document 185, the Court rescheduled the hearing from October 29, 2007 until November 13, 2007.

5. Petitioner has concerns regarding the answer; it has seemingly become a pattern of inmates, at least at the Big Spring facility, not to receive court documents, government documents, and times past and only upon filing for a docket does those inmates eventually learn they were just kicked to the side; that Petitioner is concerned regarding Government's failure to make any answer in this case; or at least not sending the Petitioner any copy.

6. Various cases, which could be set forth if necessary, have had a simpler matter of not receiving documents, and the inmates wait patiently, only to find out their appeal dates or other important matters have lapsed, and then having to struggle to get such matters reinstated solely because no copy was ever sent to them, and Petitioner does not wish to have to travel this extensive trail.

7. Petitioner request a copy of Government's answer, and the time to make any answer to that document, before any hearing is set.

8. Petitioner does not make this for meanness nor vindictiveness but with a good faith belief, and because he has not received anything, except the court's last two orders, and holds a concern

it could prejudice him later.

9. Petitioner asks the Court to have government forward a copy of its answer to Petitioner, and grant Petitioner the appropriate time within which to make a response to that motion.

WHEREFORE Petitioner prays the Court will order Government to forward to Petitioner a copy of its answer to his § 2255, and for the time to make answer, because Petitioner has **never** received anything from Government, and any other relief that the Court deems just and proper.

DATED this 15th day of October, 2007.

Respectfully submitted,

Ernest M. Esparza

ERNEST M. ESPARZA
Petitioner, Pro se.

GWS/cc:

CERTIFICATE OF SERVICE

The undersigned hereby certifies he caused a true and correct copy of the foregoing motion to the attorney for the Respondent, First Class, postage prepaid thereon and addressed to:

MICHAEL K. KAWAHARA, AUSA
FLORENCE T. NAKAKUNI, AUSA
OFFICE OF U.S. ATTORNEY
ROOM 6-100, FEDERAL BUILDING
300 ALA MOANA BLVD.
HONOLULU, HAWAII 96850
808/541.2850

declaring Petitioner placed the same into prison official hands for mailing, under the penalty of perjury per 28 USC § 1746, all on this 15th day of October, 2007.



ERNEST M. ESPARZA
Petitioner, Pro se.

GWS/cc: 7006 2760 0000 6182 4098